



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: APRIL 25, 2023

IN THE MATTER OF:

Appeal Board No. 628236

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed February 14, 2023 (), the Administrative Law Judge overruled the employer's objection and sustained the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. The employer contended that it discharged the claimant for two reasons: (1) that he was no longer able to perform his duties as a result of the May 20, 2022 advisement of the Senate that he violated the Senate's Policy to Prevent Harassment and Discrimination; (2) that he failed to cooperate in an employer investigation on and after April 28, 2022.

Per Board Rule Section 461.1(b), the employer was required to provide a written statement describing the specific events which are grounds for denying benefits to the claimant. The employer did not do so regarding the underlying

incident that allegedly violated the Senate's Policy. However, the employer is still entitled to present evidence concerning the claimant's alleged failure to cooperate in an employer investigation on and after April 28, 2022. Testimony and evidence from both parties should be taken on this issue.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER